IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2554 of 2001

For Approval and Signature:
HONOURABLE **MS. JUSTICE R.M.DOSHIT**
&
HONOURABLE **MR.JUSTICE Z.K.SAIYED**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SHANTABEN CHINUBHAI PATEL, WD/O DECD.CHINUBHAI KALIDAS PATEL & 5 - Appellant(s)
Versus
BABURAM & 5 - Defendant(s)

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Appearance **:**
MR UDAYAN P VYAS for Appellants

DELETED for Defendant(s) : 1, 4,
SERVED BY RPAD - (N) for Defendant(s) : 2,
MR PV NANAVATI for MR VIBHUTI NANAVATI for Defendant(s) : 3, 6,
NOTICE SERVED for Defendant(s) : 5,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MR.JUSTICE Z.K.SAIYED
21st November, 2007

ORAL JUDGMENT *(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)*

This Appeal, preferred under Section 173(1) of the Motor Vehicles Act, 1988, by the claimants in

Motor Accident Claims Petition No.1363 of 1989, arises from the Judgment and Award dated 10th December,2000, passed by the Motor Accident Claims Tribunal, Nadiad.

In a road accident occurred between the Truck bearing registration No. GTJ-7248 and motor car, bearing registration No. GBN 289 on 15th July, 1989 the deceased Chunibhai Kalidas Patel lost his life. Both the vehicles were insured by the respondent – New India Assurance Company Ltd. (*hereinafter referred to as "**the Insurance Company**"*). The claimants – widow of the victim, two major children and two minor children of the victim and his mother filed claim Petition No.1363 of 1989 before the Motor Accident Claims Tribunal, Nadiad. According to the claimants, the late Chunibhai was a qualified Engineer. After serving with the State Government as Gazetted Officer for 7 years he had joined construction firm M/s. Ramendra J. Parikh as a partner. At the time of his death his annual income was around Rs.87,000/- and that his income was expected to increase every year. In support of their claim the claimants produced Income-tax returns filed by the deceased and the assessment orders made in respect of such returns. The widow of the deceased examined herself and the Chartered Accountant to establish the prospective increase of income of the deceased. The Tribunal held that the income of the deceased from his business, at the time of his death, was Rs.78,785/-. Taking into account the future income of Rs.1,65,000/- and after deducting 1/3rd of

the income for the maintenance of deceased the annual dependency factor was arrived at Rs.1,10,000/-. The learned Tribunal has adopted multiplier of 13 and to that the Tribunal has added a sum of Rs.20,000/- for loss of expectancy of life and Rs.5000/- for funeral expenses. The Tribunal has awarded a sum of Rs.14,55,000/- with interest at the rate of 12 % p.a. and the cost.

Feeling aggrieved, the claimants have preferred the present Appeal for enhancement of the amount of compensation.

Mr. Vyas has appeared for the claimants. He has vehemently argued that the multiplier of 13 adopted by the Tribunal is *erroneous*. Considering that the age of the deceased was 45 years the Tribunal ought to have adopted multiplier of 15 years. Mr. Vyas has also relied upon the Income-tax Returns and the assessment orders produced on the record. He has submitted that the Tribunal has erred in calculating the prospective income of the deceased. He has relied upon the deposition of the Chartered Accountant Shri Ramabhai Patel (Ex.62). He has submitted that the Chartered Accountant did depose before the Court that the annual income of the deceased was likely to increase to Rs.25 lacs. He has also relied upon the evidence of Shantaben, the widow of the deceased (Ex.54).

Mr. Nanavati has appeared for the Insurance Company. He has contested the Appeal and has supported the judgment of the learned Tribunal. He

has submitted that the multiplier of 13 years, adopted by the learned Tribunal is appropriate. Although he has assailed the prospective income determined by the Tribunal below, in absence of the challenge, he has submitted that the compensation awarded by the Tribunal is more than adequate.The claim for enhancement requires to be rejected. Mr. Nanavati has relied upon the judgments of the Hon'ble Supreme Court in the matter of **UNITED INDIA INSURANCE CO. LTD. V/s. PATRICIA JEAN MAHAJAN & ORS.,** {2002 (4) GLR 2900} and of **THE MANAGING DIRECTOR, TNSTC v/s. SRIPRIYA & ORS.,** {2007 (4) SCALE 222}.

We are unable to agree with Mr. Vyas. In the present Appeal filed by the claimants, the claimants have produced returns which were filed during the couple of years before the death of the deceased and the one which was filed after his death. As per the said returns, the income of the deceased was calculated at Rs.78,785/-. As to the prospective income of Rs.1,65,000/- determined by the Tribunal, there is hardly any basis. However, in absence of any challenge by the respondents, we do not interfere with the decision arrived at by the learned Tribunal. The dependency factor, after deduction of 1/3 of the income for the maintenance of the deceased, also does not warrant interference. Having regard to the age of the deceased, multiplier of 13 adopted by the Tribunal is appropriate. The conventional amount of Rs.25,000/-, awarded by the Tribunal is also adequate.

For the aforesaid reasons we hold that the compensation awarded by the Tribunal is adequate. The claim for enhancement made by the claimants – appellants in the present Appeal is unjustified. The Appeal is dismissed with costs.

(MS. R.M.DOSHIT,J.)

(Z. K. SAIYED, J.)

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